UNITED STATES DEPARTMENT OF AGRICULTURE

Food Distribution Administration
Washington, D. C.

SUMMARIES OF DECISIONS BY THE SECRETARY OF AGRICULTURE of complaints filed under THE PERISHABLE AGRICULTURAL COMMODITIES ACT

No. 9 - NOT TO BE PUBLISHED - July 1, 1943

I N D E X

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PACA SUMMARIES OF DECISIONS NOT TO BE PUBLISHED

S-2398, May 22, 1940, Docket 3288; (S.P.)

CHASE & CO., INC., SANFORD, FLA. v. UNITED FRUIT & PRODUCE CO., HARTFORD, CONN.

Violation charged: Unjustified rejection of a carload of celery.

Principal points involved: Submission of counter offer through broker made broker agent of both parties; failure of buyer to receive a copy of broker's memorandum of sale did not invalidate contract or make it unenforceable.

B-1
B-7
B-23

Order: Complainant awarded $177.13, plus interest; publication of facts.

Appeal: Judgment entered for respondent February 1942.

Outline of Facts

On April 9, 1938, complainant wired his agent, a broker, that the car was loaded with celery which graded 75% U. S. No. 1, and the agent issued a memorandum of sale dated April 11 which so described it, the sale covering 364 crates at $2.20 per crate delivered Hartford, Connecticut. Upon arrival at Hartford, respondent refused to accept the celery, claiming it was warranted as 80% U. S. No. 1 and did not meet that specification. Resale at $1.75 per crate resulted in net proceeds of $346.95, or a loss of $177.13.

Respondent stated he did not receive a copy of the memorandum of sale but did receive a manifest which described the celery as 80% U. S. No. 1. The broker testified that the percentage statement on the manifest was a typographical error.

Rulings included in Decision

1. At the inception of the negotiations the broker was the complainant's agent and was not the agent of the respondent. Later the respondent submitted counter offers to the complainant through the broker and he thereby became the agent of both parties, and as such was authorized to issue a memorandum of sale. The broker testified that he confirmed orally over the telephone the complainant's modified offer to sell at $2.20 per crate delivered at Hartford, Conn., and also mailed a copy of the written confirmation of sale to respondent. Upon cross-examination he was not able to state exactly when either the manifest or memorandum of sale was mailed, but the exhibits themselves indicated that they may have been mailed April 11. Since the purchase and sale negotiations were conducted through the broker and he thereby became the agent of both parties with authority

to issue a memorandum of sale, the respondent's failure to receive a copy thereof, if a copy was not, in fact, received through the mail, did not invalidate the contract or render it unenforceable.

2. The celery graded 75% U. S. No. 1 and otherwise conformed to the complainant's warranty and respondent's rejection was without reasonable cause. Complainant was awarded $177.13, plus interest.

Appeal

An appeal to the Federal District Court of New Haven, Conn., was filed by respondent. About February 12, 1942, the Court entered judgment in favor of the respondent, holding that respondent's failure to accept delivery was not "without reasonable cause" since time of delivery was of the essence of the contract and there was no compliance with the Statute of Frauds. It was agreed between the respondent and the broker that the shipment was to arrive April 13. As respondent needed the celery for the Easter market, delivery on April 13 was an essential provision of the contract. Furthermore, the broker's memorandum of sale did not contain all the essential elements of the contract since time of delivery had been agreed upon but was omitted from the memorandum and therefore the memorandum was not sufficient to comply with the Statute of Frauds.

S-2865, Feb. 10, 1942, Docket 3891: (S.P.)

WENATCHEE-BEEBE ORCHARD CO., WENATCHEE, WASH. v. BEN E. KEITH CO., FORT WORTH, TEXAS

Violation charged: Unjustified rejection of a carload of apples.

Principal points involved: Icing of car at Wenatchee, the icing point 59 miles from loading point, considered "initial icing"; upon proof that apples conformed to seller's warranty and were initially iced, burden of proof was on respondent to establish lack of suitable shipping condition.

D-15
R-11
D-4A
N-4

Order: Complainant awarded $502.10, plus interest; publication of facts.

Appeal: Court found that respondent had reasonable cause for rejection of apples, that Secretary erroneously awarded reparation and respondent did not violate any legal obligation to complainant.

Outline of Facts

On September 17, 1940, the respondent purchased, at $1.20 per box f.o.b. shipping point, a carload of Red Delicious apples, shipped from Pateros, Washington, a point on the Great Northern RR. on September 12, consigned to complainant at Minneapolis, then in transit on the Great Northern R. R. at some point west of Minneapolis. Upon arrival of the car at Minneapolis on September 17, it was delivered by the Great Northern RR. to the Chicago, Rock Island and Pacific RR., and at Kansas City, Mo., on September 19, to the Missouri-Kansas-Texas Line, arriving at Fort Worth, Texas, on September 21. Respondent made inspection on that date and rejected the apples. Resale at auction in St. Louis, Mo., on September 30, resulted in gross sales of $863.50, from which were deducted freight charges of $392.93, refrigeration of $46, demurrage at Fort Worth of $2.20, and auction charges of $17.27, a total of $458.40, resulting in net proceeds of $405.10, causing complainant to suffer a loss of $502.10, for which an award of reparation was requested.

Respondent denied that the car was "under initial ice as quoted by the complainant," alleging that it arrived at 8:30 a.m. September 21 and inspection showed vents were closed, plugs were in, the bunkers were dry, and the temperature of the fruit was 76°. It was claimed that the fruit was not in suitable shipping condition.

Federal-State of Washington inspection was completed at loading point at 6:00 p.m. on September 12, 1940. The inspector certified that the Red Delicious apples were hard and that there was no decay. The grade was stated as "Washington Fancy."

Federal inspection for condition, restricted to boxes next to the center bracing and covering only sizes 64 to 88, was made at Fort Worth on September 23. The inspector certified that decay, consisting of "Blue Mold Rot in early stages and internal breakdown," then averaged 2%, and that approximately 25% of the apples were "dead ripe." He stated that the balance of the load varied "from firm ripe to ripe, a few firm."

Rulings included in Decision

1. Respondent's claim that the car was not initially iced was not supported by the record. The report of investigation, copy of which was served on respondent on December 8, showed that the use of the term "initial ice" is understood by the trade as meaning that ice has been or will be placed in the car at the first regular icing station if there are no icing facilities at loading point. The distance between Pateros, Washington, the loading point, and Wenatchee, Washington, the icing point, is 59 miles. The car was "initially iced" with 9,600 pounds of ice at Wenatchee at 11 a.m. on September 13. It was not clear from the record when loading was commenced and finished, but, since it was shown that the Federal-State of Washington

inspection began at 9:00 a.m. on September 12 and continued to 6:00 p.m. of that day. It was assumed that loading operations extended over the same period.

2. Respondent failed to meet the burden of proving lack of suitable shipping condition at the time of purchase of the apples. There was no record of any inspection made at Minneapolis, or any intermediate point between shipping point and Fort Worth, inspection at the latter point being made two days following arrival of the car. There was proof that the outside temperature ranged from 67° to 85° F. at Minneapolis on September 18, and that the bunkers of the car were "practically dry" at that time, "there being very little ice in either end." The loading point certificate was proof that the apples conformed to the complainant's warranty thereof at the time of shipment, and the record showed that 9,600 pounds of ice were placed in the car at 11 o'clock a.m. on the next day. The condition of the apples, as disclosed by the Federal inspection made at Fort Worth on September 23, was of slight help in establishing their condition on September 17. Respondent knew that the car had been iced only once and, apparently, he thought that the apples would carry from Paterson, Washington, to Fort Worth, Texas, without additional ice. In fact, respondent took the position that additional icing in transit was unnecessary if there had been initial icing.

3. Respondent's rejection of the apples was without reasonable cause, and in violation of section 2 of the act. Complainant was awarded $502.10, plus interest.

Appeal

An appeal was filed by respondent in the Federal District Court. The court on April 13, 1943 rendered judgment in favor of respondent decreeing that complainant was entitled to no recovery whatsoever against respondent. The judgment states that the defendant (complainant) did not appear at the hearing but, upon considering the transcript of the Department's proceedings and the evidence offered by respondent, the court found that respondent's rejection was not without reasonable cause and, in refusing to accept and pay for the apples, respondent did not violate any legal obligation to complainant and the Secretary erroneously awarded reparation against respondent.

S-2909-A, September 5, 1942, Docket 3934

A. BURKER & CO., INC., BALTIMORE, MD., v. FRANK G. CASELLA INC., NEW YORK, N.Y.

Petition: of respondent for a rehearing.
Principal point involved: Refusal of examiner to explain his ruling at hearing did not deny respondent a fair hearing or indicate bias.

Order: Petition for rehearing denied.

Outline of Facts

By order dated April 24, 1942, reparation was awarded complainant in the amount of the sale price of an interstate truckload shipment of peaches. Respondent asked for a rehearing for the following reasons: "We never presented our proof; the examiner was prejudiced from the start, and it is my opinion that he had his mind made up as soon as he saw me, and before he heard the case."

The record shows that during the hearing respondent's attorney withdrew and refused to proceed further on the ground that the examiner was prejudiced as evidenced by the examiner's refusal to explain his ruling sustaining complainant's objection to a question asked by the respondent's attorney.

Rulings included in Decision

The failure of the examiner to explain his ruling or, on his own motion, to recess the hearing or inform the respondent how then to proceed, did not deny the respondent a fair hearing and could not be regarded as an indication of bias. No sufficient reason was disclosed by the record for the withdrawal of the respondent's attorney. If the respondent was prejudiced by the sudden termination of the hearing, resulting in its failure to present any evidence, such prejudice was not due to a denial of the opportunity to offer proof. The complainant was not represented by counsel, and the respondent, if an appropriate request had been made, could have proceeded without the aid of counsel.

S-2918, May 21, 1942, Docket 3837: (Hearing)

AL KAISER CO., CHICAGO, ILL. v. DETROIT TOMATO & PRODUCE CO., DETROIT, MICH., AND/OR MILLS BROS., CHICAGO, ILL.

F-46

Violation charged: Failure to pay for a carload of tomatoes.

Principal point involved: Inspection at time bargain is made in absence of guilty knowledge on part of seller, precludes existence of implied warranty.

Order: Complainant awarded $1003, plus interest, against Detroit Tomato & Produce Co.; complaint against Mills Bros. dismissed; Detroit Tomatoe & Produce Co.'s countercomplaint dismissed.

Outline of Facts

On Nov. 18, 1940, complainant sold to Detroit Tomato & Produce Co., through that company's broker acting as its agent, for the net price of $1003, a carload of 650 lugs of Foothill Brand tomatoes, purchased from and shipped by Mills Brothers from Orange Cove, Cal., to Chicago, Ill., and then on track at Chicago. Inspection was made by the agent at that time and shipment was made to Detroit, Mich., where the car arrived Nov. 20, on which date the stock was unloaded and taken into the place of business of the purchaser. Complainant asked for an award in the amount of the purchase price. Mills Brothers were made a respondent in the apparent belief that, if the purchaser's defense of unsuitable shipping condition and unfitness were sustained, Mills Brothers might be liable for complainant's damages. After filing the complaint, Al Kaiser Co. assigned the cause of action to the Atcheson, Topeka & Santa Fe Ry.Co., copy of the assignment being submitted to the Department.

The Detroit Tomato & Produce Company filed an answer alleging that complainant represented and warranted that the tomatoes were in suitable shipping condition and fit for the purpose of repacking and resale, for which purpose complainant knew they were being purchased; that they were not in suitable shipping condition because they were infected with Bacterial Soft Rot and Phoma Rot, diseases of field origin; that the defects were latent and could not be discovered upon inspection and were unknown to the respondent and its agent, becoming apparent in the ripening process; that the tomatoes were worthless and that expenses of $547.55 were incurred, which amount was sought as an award in countercomplaint. Complainant denied making any representation or warranty with reference to the stock.

Mills Brothers, in its answer, alleged that the shipment arrived in Chicago without delay in transit and that the tomatoes were sold to complainant the next day while on team track where they were inspected and accepted by complainant and moved for dismissal on the ground that the complaint did not charge them with either breach of contract or violation of the act, and there was no contractual relation between them and the Detroit Tomatoe and Produce Company.

Federal inspection was made at Detroit on Nov. 25. Three lots were inspected, of 460 lugs, 120 lugs and 150 lugs. The tomatoes had apparently been removed from the car in which they were shipped and were loose in lugs and unwrapped. In addition it appeared that those in the 120 lug lot had not been sorted. Although the lugs bore various labels, most of them had Foothill Brand label. 460 lugs showed decay averaging 10%, with approximately 80% of the tomatoes mature green and 10% turning. An average of 12% of the tomatoes showed numerous brown sunken spots, 6% brownish shoulder bruises, and 10% shriveled spots. In the 120 lugs which had not been sorted, the inspection revealed decay averaging 25%, consisting of various rots, mostly Bacterial Soft and Phoma Rots in various stages. In this lot approximately 55% of the tomatoes were mature green, 20% turning, an average of 11% showed numerous brown sunken spots, 7% brownish shoulder bruises, and 8% shriveled spots. Among the remarks made by the inspector on his certificate was the following: "Also examined 150 lugs and eleven

30-gallon drums of tomatoes which applicant states were unloaded from above car; practically all tomatoes in these containers showed decay or numerous brown sunken spots." Asked whether he thought the tomatoes inspected had any commercial value, the inspector answered: "I don't believe the ones that show decay or various soft conditions had."

Rulings included in Decision

1. Although Detroit Tomato and Produce Company claimed that all tomatoes shown to the inspector came from this car, it was difficult to understand how this statement could be true, since the evidence clearly showed that the car contained 650 lugs and the three lots inspected contained 460, 120 and 150 lugs, making a total of 730 lugs, without including the 11 30-gal. drums or the stock disposed of prior to the time of inspection.

2. Detroit Tomato and Produce Co.'s contention that the condition of the tomatoes excused it from the duty of paying as agreed was untenable. Although par. 1, sec. 15, of the Uniform Sales Act provides: "Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose", par. 3 of that section states: "If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed." In the proceeding entitled Winslow & Gregory Produce Co. v. A. J. Associates Produce Corp., S-2503, decided Oct. 7, 1940, the question of suitable shipping condition was considered by the Secretary. It was recognized there, upon facts similar to those in the instant case, that, where there is an express or implied warranty, produce which is not in suitable shipping condition need not be accepted by the buyer. In that proceeding, as in this, there was clearly no express warranty. It was held in the Winslow decision that there was no implied warranty, because the purchaser relied upon the exercise of his own skill and judgment in selecting the goods. It was there said that ". . . an inspection had at the time a bargain is made, in the absence of any guilty knowledge on the part of the seller, precludes existence of any implied warranty, regardless of the latency of the defect . . .(that) there was an inspection by the respondent at the time of the purchase and no guilty knowledge on the part of the seller has been shown." These principles are in harmony with many court decisions. Complainant was awarded, for the use and benefit of his assignee, Atcheson, Topeka & Santa Fe. Ry. Co., $1003, plus interest, against Detroit Tomato & Produce Company.

3. The countercomplaint brought by Detroit Tomato and Produce Company was dismissed.

4. The complaint against Mills Brothers was dismissed.

S-2925, June 23, 1942, Docket 3989: (S.P.)

LEON C. BULOW, INC., BRIDGEVILLE, DELAWARE v. JAMES LOMBARDI, NEW HAVEN, CONN.

Violation charged: Failure to pay the agreed price for a truckload of peaches.

Principal point involved: Preponderance of evidence did not support complainant's contention as to sale.

N-14
L-5

Order: Complaint dismissed, subject to being reopened within 50 days if respondent does not pay amount admitted due complainant.

Outline of Facts

On or about August 29, 1940, complainant shipped a truckload of peaches from Bridgeville, Delaware to New Haven, Connecticut. Complainant alleged that the peaches were sold to respondent's agent at $1.30 per bushel, or for $421.20, plus freight to New Haven of $70, making a total of $491.20. Reparation was asked in the amount of $491.20.

Respondent filed an answer denying that the peaches were purchased by him and alleging that it was agreed that they would be handled for the account of complainant, and that the net proceeds of sale amounted to $127, which he has been ready, willing and able to pay at all times. Respondent's evidence, in the form of deposition, supported his allegations. The driver of the truck stated that he neither bought nor was authorized to buy the peaches.

Ruling included in Decision

Complainant failed to establish by fair preponderance of evidence that the peaches were sold to respondent. While he said the peaches were sold to respondent's agent at $1.30 per bushel, the only evidence in support of that contention was the statement of a witness who said that James Lombardi was present and that the peaches were purchased by the respondent at $1.25 per bushel. While the net proceeds from the sale appeared to be somewhat small, nevertheless the testimony indicated that the market was "demoralized" both in New Haven and in New York City where some of the fruit was finally sold. The complaint was dismissed, but it was ordered that the proceeding might, upon motion filed with the Hearing Clerk, Office of the Solicitor, Department of Agriculture, within 50 days from June 23, 1942, be reopened if respondent failed to pay to complainant the net proceeds of $127 within 30 days from June 23, 1942.

S-2927, July 6, 1942, Docket 4089: (S. P.)

JUSTMAN-FRANKENTHAL CO., WESLACO, TEXAS v. LEIDERMAN-SILVERSTEIN COMMISSION CO., DETROIT, MICH.

Violation charged: Unjustified rejection of a carload of onions.

Principal point involved: As onions were not "bright clean onions" respondent's rejection was not without reasonable cause.

Order: Complaint dismissed.

Outline of Facts

The complaint alleged that Hyman Frankenthal, through a broker, on June 2, 1940 sold to respondent a carload of onions shipped from Texas to Michigan, and that respondent rejected the shipment without reasonable cause. Resale was made for $272.44 less than the contract price, for which amount complainant, to whom Hyman Frankenthal's interest in the transaction was assigned, asked for an award.

In its answer, respondent claimed that since the onions shipped were not of the kind and quality specified in the contract, its rejection was not without reasonable cause.

The broker's memorandum of sale described the commodity as "510 - 50 lb. bags 85% U. S. No. 1 Grade Texas Yellow Onions @ $2.30 delivered GREEN TOP BRAND clean bright stock." The inspection certificate issued in Detroit contains the description: "Yellow Bermuda ONION in 50 pound papernet sacks stenciled, 'Scoop Texas Onions, Frankenthal Company, Weslaco, Texas' . . . Stock fairly clean to slightly dirty, generally bright to fairly bright, . . ." In a telegram made a part of the report of investigation, served on both parties, the broker stated that reference to Green Top brand in the confirmation was through error, and that the broker read to respondent complainant's wire in which Scoop brand was mentioned. The file showed that complainant, by wire to the broker, offered Green Top brand at $2.40 on June 2. The next day, the broker wired "ANSWERING IF BRIGHT CLEAN LEIDERMAN COMMISSION OFFERS 2.25 . . . GREENTOP BRAND . " Complainant replied "Wire received too late car sold elsewhere (car number) your prices too low best we can do adlar (offer subject to confirmation delivered) (car number) shipped 2nd 510 85% Usone yellows SCOOP 2.35 . . . " Apparently this was the wire which the broker claimed to have read to respondent. The broker then wired complainant "ANSWERING LEIDERMAN WILL SPLIT DIFFERENCE TAKE CAR EIGHTY FIVE PERCENT USONE YELLOWS SHIPPED SECOND 2.30 DELIVERED TRY HARD CONFIRM COREC."

Ruling included in Decision

Respondent's rejection of the carload of onions was not without reasonable cause. While there was some misunderstanding as to the

exact terms of the contract, it did not appear that the onions shipped were those described in the contract. It was apparent that the seller intended to sell Scoop brand. The evidence was conflicting as to respondent's knowledge of the brand in the car shipped, but even if it were established that respondent knew the reference to Green Top brand in the confirmation was a mistake, it was clear that respondent's offer, as well as the confirmation, called for bright clean onions, which those shipped were not. The complaint was dismissed.

S-2930, July 15, 1942, Docket 4146: (S. P.)

R. E. ADAMS MARKETING CO., RIVERTON, N. J. v. SPRATT GROCERY CO., INC., LAURENS, S. C.

Violation charged: Failure to pay the full contract purchase price for a truckload of potatoes.
Principal points involved: Failure to ship another truckload under a prior contract, with justifiable reason, was no legal excuse for failing to pay full price for potatoes received.
Order: Complainant awarded $55, plus interest.

Outline of Facts

On or about November 10, 1941, through a broker, complainant sold to respondent a truckload of U. S. No. 1, size A, Cobbler potatoes at the agreed price of $319 delivered, of which amount $264 was paid by respondent, leaving a balance of $55 still due and owing, for which amount complainant asked an award. Shipment was made from Riverton, N. J. to Laurens, S. C.

Respondent filed an answer denying any liability, contending the deduction of $55 from the contract price of the potatoes was justified because complainant failed to make a shipment on September 19 due to the fact that the price of potatoes had advanced. Complainant claimed that a prior contract called for shipment on or about September 19 "providing can get truck", and that he was unable to get a truck.

Ruling included in Decision

The failure of respondent to account to complainant for the balance of the purchase price of the potatoes bought from complainant was in violation of the act. The evidence showed that when complainant confirmed the sale of the potatoes on September 19, he definitely stated he would ship them, provided he could obtain a truck, and he informed respondent, through the broker, that the trucks for the South were very scarce. The evidence was conflicting as to whether potatoes advanced in price on and shortly after September 19.

This did not seem material, however, since the weight of the evidence showed that delivery was not made because no truck was obtainable. The respondent's defense, therefore, could not prevail, and there was no legal excuse for respondent's failure to pay in full for the potatoes purchased in November. Complainant was awarded $55, plus interest.

S-2932, July 18, 1942, Docket 4103

W. CALVERT CULLEN, JR., PAINTER, VA. v. K. J. MEARS, ATLANTIC, VA.

Violation charged: Failure to deliver in accordance with contract carload of potatoes.

Principal point involved: Official shipping point inspection constituted reason for seller to believe he was delivering the grade sold.

H-38

Order: Complaint dismissed.

Outline of Facts

On July 15, 1941, complainant, through his agent, purchased from respondent 300 100-pound sacks of U. S. No. 1 potatoes, at $1.20 per sack, f.o.b. Oak Hall, Va., and paid the agreed price of $360. Complainant sold and shipped the potatoes to a firm at New Bedford, Mass., where, after they had been unloaded, a Federal inspector certified them as too small to grade U. S. No. 1, Size A. Complainant settled with his purchaser for $135 less than the price agreed upon and, claiming that respondent failed to make good delivery on his contract, sought to collect that sum from respondent.

Respondent maintained that the potatoes were U. S. No. 1 grade and had been bought and accepted as such by respondent's agent. Federal-State inspector certified them as grading U. S. No. 1 at Oak Hall, Va.

Ruling included in Decision

Respondent did not fail to deliver in accordance with contract terms without reasonable cause in violation of section 2 of the act. Even if it were established that the New Bedford grading was correct and the Oak Hall grading incorrect and that, accordingly, respondent did not actually deliver U. S. No. 1 potatoes, the fact that the potatoes had been graded U. S. No. 1 by an authorized inspector constituted reason for respondent to believe that he was delivering the grade sold. If the Oak Hall grading was the correct on, respondent delivered the grade sold. In either case, no violation of the act was shown which would authorize an award of reparation, and the complaint was therefore dismissed.

S-2941, August 28, 1942, Docket 4142: (S. P.)

SAM FRIEDMAN PRODUCE CO., CLEVELAND, OHIO v. G. ALLEN IVES, NEW BERN, NORTH CAROLINA

Violation charged: Failure to deliver in accordance with contract car of potatoes.

Principal point involved: In delivered sale, Federal inspection at destination restricted to condition of portion of load and secured three days after arrival does not overcome weight of Federal-State inspection five days prior to delivery at destination.

N-12
N-13

Order: Complaint dismissed.

Outline of Facts

By exchange of telegrams on July 5, 1940, through a broker, complainant bought from respondent 240 sacks of U. S. No. 1, Size A Cobbler potatoes, at $1.70 per sack delivered, for diversion from North Carolina to Cleveland, where they arrived on July 8. Complainant inspected the potatoes, accepted them, and paid to respondent $408, the agreed purchase price. On July 11, after receiving complaints from its customers regarding the potatoes, complainant obtained a Federal inspection on some of the potatoes restricted to condition only. It certified that approximately 80% of the potatoes showed Late Blight Tuber Rot, and that 50% showed an average of 3% wet breakdown following Late Blight Tuber Rot. Complainant asked for an award of $230.15, representing his loss on the car, because of inferior quality of the stock received.

A copy of the formal complaint was served on respondent on February 3, 1942. Respondent answered that the potatoes were graded U. S. No. 1, Size A, by a Federal-State inspector, that respondent had not warranted them free from disease, and that he had not violated the act.

Ruling included in Decision

Respondent delivered potatoes in accordance with the terms of his contract. Although complainant, in its opening statement, says that its complaint relates to an inherent disease which was not prevalent at the time of the North Carolina inspection, there was some indication that it claimed the potatoes were not U. S. No. 1, Size A at that time, because of the subsequent discovery of the disease. It did not appear that that inspection was appealed, and the only other inspection certificate in the record did not show grade and size, but condition only of a portion of the potatoes three days after the buyer had accepted them. It would take much stronger evidence than appeared in this record to authorize a conclusion that the potatoes were not of the grade and size certified. Furthermore, even

if complainant had shown that the potatoes did not meet the contract specifications, it could not be said that respondent, with a Federal State certification showing that they did meet the specifications, was without reasonable cause in failing to deliver in accordance with the terms of the contract. If there was reasonable cause, failure to deliver was not a violation of the act authorizing an award of reparation. The complaint was dismissed.

S-2942, August 28, 1942, Docket 4153: (Hearing)

Re: Application of Esther C. LaRosa of Indianapolis, Indiana, for a license under the Perishable Agricultural Commodities Act to do business as a dealer under the name Interstate Shippers.

K-9

Principal Point involved: Application not bona fide but to enable her husband to operate as a licensee, but his repeated flagrant violations justified refusal to issue license.

Order: Application for license denied.

Outline of Facts

An order to show cause was issued pursuant to the Perishable Agricultural Commodities Act against Interstate Shippers, of Indianapolis, Indiana, the applicant. It was alleged that its application for a license under the act, signed by Esther C. LaRosa, owner, had been received from and was for the benefit of John M. LaRosa, who had been an officer of, and responsible for violations of the act by, Joseph M. LaRosa Sons, Inc., and who was not entitled to the license because of these violations. A copy of the order was served on Esther C. LaRosa by registered mail on May 2, 1942, who requested an oral hearing.

Esther C. LaRosa, the only witness, testified that she was never in the produce business, but had kept books for John M. LaRosa, her husband, when he was in that business for himself prior to June, 1940. She stated she did not know enough about buying and selling to operate a business without employing a manager, and that her husband would be the manager so long as he continued to be available. He discontinued business for himself about 1940, and thereafter was secretary-treasurer of Joseph M. LaRosa Sons, Inc. He and the other officers of that corporation had been found guilty in a Federal court in Oklahoma, of using the mails for conspiracy to defraud, but had not been sentenced at the time of the hearing. If he went to prison or was drafted into the army, she would operate the business for herself. Depositions were introduced by the Government showing that John M. LaRosa, in June, 1941, had obtained possession of perishable agricultural commodities in interstate commerce by giving checks which were returned unpaid because of insufficient funds.

Ruling included in Decision

John M. LaRosa's giving bad checks and failing to pay for vegetables were repeated flagrant violations of the act which justify refusal to issue him a license. Under the facts disclosed by the record, the application of Interstate Shippers is to enable John M. LaRosa to operate as a licensee, and is not the bona fide application of Esther C. LaRosa. The application for license under the Perishable Agricultural Commodities Act filed by Esther C. LaRosa to do business as Interstate Shippers, was denied. If the fact situation changes, this denial should not prejudice any future application by Esther C. LaRosa, as it does not appear that she attempted to conceal any facts in connection with the present application.

S-2944, September 3, 1942, Docket 4139: (S. P.)

H. SHOOM & COMPANY, LTD., TORONTO, ONTARIO, CANADA v. ALFORD & MILLER COMPANY, INC. HAZLEHURST, MISSISSIPPI

Violation charged: Failure to pay a deficit incurred in selling a carload of cabbage for respondent's account.

Principal point involved: When party alleges modifi-
N-4 cation of contract, burden of proof is on him; failure
H-35 to reject within 24 hours was deemed acceptance.

Order: Complaint dismissed.

Outline of Facts

On or about May 19, 1941, through a broker, complainant purchased from the respondent, on an f.o.b. basis, one carload of cabbage, which was shipped from Hazlehurst, Mississippi on May 19 and arrived at Toronto, Canada on May 22, 1941. The complainant was notified of its arrival on May 23. On May 26, 1941, complainant orally notified the broker that it would not accept the cabbage under the terms of the contract.

The complainant contended that on May 26 the car was released by the seller to the broker, who in turn, released it to the complainant to sell on consignment; that the sale resulted in total gross proceeds of $743.20; that it paid the purchase price of $281.25, all duty, transportation and incidental charges amounting to $552.26 and charged a 10% commission of $74.22, the total debit amounting to $907.73 and resulting in a net deficit of $165.53 for which amount an award of damages was sought.

Respondent claimed that when the broker advised it, on May 26, that complainant was undertaking to reject the car, the broker was authorized to take delivery and sell to the best advantage only in

the event the shipment had been delayed, and when the broker learned the car had not been delayed he did not authorize complainant to handle on consignment (the broker corroborated this testimony); and that the shipment was delivered to and accepted by complainant under the contract of purchase and sale and complainant became legally obligated to accept it by its failure to reject within twenty-four hours after receiving notice of arrival.

Ruling included in Decision

1. Complainant failed to show that the original contract of purchase and sale was changed to a consignment transaction. When one party to a contract claims a modification thereof, he must assume the burden of proving his contentions by a fair preponderance of the evidence. It is clear from the record that the complainant has not sustained the burden of proof.

2. Since complainant did not notify respondent that it was rejecting the shipment within twenty-four hours after receipt of notice of arrival of the produce, complainant was deemed to have accepted it as being in accordance with the terms of the written contract. The complaint was dismissed.

S-2950, September 19, 1942, Docket 4126: (S. P.)

R. G. JAMES, GIBSON, TENN. v. WEST TENNESSEE TRUCK GROWERS ASSOCIATION, GIBSON, TENN.

Violation charged: Failure to deliver car of cabbage in accordance with contract specifications.
Principal point involved: When purchaser has opportunity to inspect and there is no fraud, seller is entitled to agreed purchase price.
Order: Complaint dismissed.

Outline of Facts

On June 5, 1941 complainant purchased from respondent 560 half crates of cabbage at 87½¢ per crate, f.o.b., Gibson, Tennessee, plus $54 for ice, or a total of $544, and shipment was made to Boston, Mass. Complainant asked for an award in the sum of $492.74, for the alleged reason that the cabbage failed to meet contract specifications because of worm damage.

Respondent answered that complainant accepted the cabbage "f.o.b. cash loading point and later shipped the car himself."

Federal-State inspection certificate showed that the cabbage graded U. S. No. 1 on June 5. Inspection "restricted to product in top layer" made on June 10 upon arrival at Boston showed that

the cabbage failed "to grade U. S. No. 1 only on account worm damage."

Ruling included in decision

1. The respondent sold the cabbage under the terms "cash" and did not represent it to be U. S. No. 1, although it did so grade.

2. Complainant had an opportunity to inspect the cabbage before purchasing it, and, in the absence of fraud, respondent was entitled to retain the purchase price, even though the cabbage may have had an average of 12% worm injury upon its arrival at Boston. The complaint was dismissed.

S-2956, October 5, 1942, Docket 3872: (S. P.)

COCHRANE BROKERAGE CO., INC., KANSAS CITY, MO. v. S. D. MONASH PRODUCE CO., CLEVELAND, OHIO AND/OR C. H. ROBINSON COMPANY, MINNEAPOLIS, MINN.

D-14
G-3
M-26
M-1

Violation charged: Failure to pay for car of potatoes.
Principal points involved: Protection against labor and shrinkage includes any expenses chargeable to reconditioning: acceptance of check by broker as full settlement and retention of broker's check by seller for more than a year constitutes accord and satisfaction.
Order: Complaint dismissed.

Outline of Facts

On or about July 8, 1939, complainant sold to S. D. Monash Produce Company through a broker, S. H. Robinson Company, at $2.50 per sack delivered Cleveland, Ohio, a rolling carload of 360 100-lb. sacks of U. S. No. 1 potatoes, shipped from Homedale, Idaho, on July 3. Upon arrival on July 10, Federal inspection showed decay above the tolerance, and complainant and monash made an agreement specifying that "Monash to Pay Invoice of $2.50 per Bag on Dry Bags, Recondition those showing decay. Shipper protect shrink labor." The car was released, and on July 19 Monash submitted to Robinson a statement, with a check for $161.82. Robinson deducted $15 brokerage and forwarded its check for $146.82 to complainant. Complainant claimed the agreement did not contemplate deduction of 25¢ for 212 sacks of potatoes after reconditioning, an allowance of 9¢ per sack for new sacks, $4.40 for demurrage and $2.50 for inspection. An award was asked in the amount of $350.30, computed as follows: 316.8 sacks of potatoes, after allowing 12% deduction for decay and natural shrinkage (inspection at Cleveland showed decay averaging 8% and 4% was allowed for shrinkage), at $2.50 per sack, or $792, less $45 labor charge, $381.70 freight, and $15 brokerage.

Certificate of Federal-State inspection prior to shipment on July 3 certified the potatoes as U. S. No. 1, size A.

Rulings included in Decision

1. Since no complaint was filed against C. H. Robinson Co. until December, 1940, which was long after the statutory period for filing complaints, evidence relating to the alleged cause of action against that company could not be considered.

2. S. D. Monash Produce Company complied fully with the terms of the second contract and therefore committed no violation of the act in any respect. The proper interpretation of the provision dealing with labor and shrinkage, as established by the testimony, was that when a shipper guarantees labor and shrinkage, he must stand any and all loss, including any loss on potatoes that are repacked into plain bags, together with any demurrage, charges for new bags, labor, inspection, or any other expenses that might be chargeable to the reconditioning. The evidence showed that proper deductions were made for these items. The wording of the provision was unusual and the testimony of Monash and the broker definitely showed that it was clearly understood by each that necessary expenses incurred in connection with reconditioning and repacking, plus any loss on the reconditioned stock, was to be included. There was no basis for any assumption or estimate of how many potatoes should have been lost in reconditioning. As a matter of fact, the uncontradicted testimony clearly showed that 93 100-lb. sacks were lost. In addition, there were 212 sacks that had to be reascked and, due to the fact that many of the potatoes in these sacks were smeared, it was impossible to obtain for them the market price for potatoes of the grade and quality called for in the original contract. In fact, the potatoes in these 212 sacks were later sold for an average of less than $2.25 per cwt., which Monash used in accounting to the complainant.

3. Complainant's retention of the check for $146.82 for over a year, which check was attached as an exhibit to the formal complaint filed more than 17 months after the cause of action accrued, constituted an accord and satisfaction. When the potatoes failed to meet the requirements specified in the original contract, complainant vested considerable discretion in the broker, who was its agent throughout the transaction. The broker clearly considered the check for $161.82 to be in full settlement. In Syracuse Fruit Co. Inc. v. Richman & Samuels Inc., S-1540, it was held that retention of a check for a much shorter length of time "constitutes accord and satisfaction." To the same effect are numerous cases in court, in one of which, Hemingway v. MacKenzie, 244 N. Y. Sup. 48 (Aff. 245 N. Y. Sup. 766) the court, in sustaining the plea of defense of accord and satisfaction, said "the retention and subsequent use of the check establishes that this plaintiff throughout has exercised a proprietary

interest in and right to the check." It was ordered that the check for $146.82 be removed from the file and returned to the complainant, and the case was dismissed.

S-2978, November 9, 1942, Docket 4135: (S. P.)

B. G. HARRINGTON, ORLANDO, FLORIDA v. NATIONAL GROWERS OUTLET CO. NEW YORK, NEW YORK

Violation charged: Failure to pay in full for grapefruit and tangerines.
Principal point involved: Authority to make purchase as agent not established.
B-3
Order: Complaint dismissed.

Outline of Facts

On or about February 21, 1941, Alfred Peluso, representing himself to be acting for the National Growers Outlet, Orlando, Florida and the National Growers Outlet Company, New York, N. Y., purchased 1165 boxes of grapefruit and a quantity of tangerines from the complainant at the agreed sum of $322.36. The fruit was shipped from Florida to New York. Peluso paid complainant $81.38, leaving a balance due of $240.98, for which complainant seeks reparation.

Respondent, Irene Peluso, denied any liability, alleging she had been engaged in business in New York "ONLY", and that she authorized no one to act as her agent in Florida.

Ruling included in Decision

The complainant failed to establish that Alfred Peluso had authority to purchase grapefruit and tangerines on behalf of Irene Peluso, or that Irene Peluso ratified the contract, or received any of the produce. Complaint was dismissed.

S-2979, November 10, 1942, Docket 4143: (S. P.)

PAUL PAMER, AKRON, OHIO v. G. ALLEN IVES, NEW BERN, NORTH CAROLINA

Violation charged: Failure to deliver carload of potatoes in accordance with contract terms.
Principal point involved: Potatoes met contract re-
D-4q quirements at time of delivery, since decay developing later due to late blight was not apparent at time of delivery and not warranted against.
Order: Complaint dismissed

Outline of Facts

Through a broker, by exchange of telegrams on July 3, 1940, complainant bought from respondent, 240 sacks of U. S. No. 1, Size A, Cobbler potatoes at $1.70 per sack delivered at Akron, Ohio. Shipment was made from North Carolina to Akron, where the car arrived July 8, 1940. After inspecting, complainant accepted the potatoes and paid the agreed price, making no complaint concerning the stock until on or about July 10, when some of the produce was returned by those to whom complainant had made sales, because of its condition. Complainant claimed to have sustained a loss of $336.45, for which amount he asked an award.

Respondent claimed that the potatoes were graded U. S. No. 1, Size A, by a Federal-State inspector, and that he did not warrant them free from disease.

Federal-State inspection at Belcross, N. C., on July 3, showed that the potatoes graded U. S. No. 1, Size A. R.P.I.A. report of inspection made July 8, showed, with respect to condition, that the potatoes were fairly bright, fairly mature, firm, slightly dirty, 3 to 6% field cuts, less than 1% decay, all packages delivered in good order. Consignee signed joint report. R.P.I.A. inspection of 60 to 75 sacks made at complainant's warehouse on July 16, showed 18 to 66% of the stock showing late blight infection, ½ to 2/3 of these showing wet decay.

Ruling included in Decision

The potatoes delivered met contract requirements, Federal-State inspection at shipping point established that they graded U. S. No. 1, Size A, in all respects at time of shipment, and the inspection at delivery point established that the condition thereof had not deteriorated at time of the delivery, and that all packages were delivered in good order. The decay developing later due to late blight, which was not apparent at time of delivery, was not warranted against by the respondent. The complaint was dismissed.

S-2993, December 9, 1942, Docket 4165: (S. P.)

VINCENT GUIFRE & SONS, CANASTOTA, N. Y. v. H. & J. GOLDBERG, NEWARK, N. J.

Violation charged: Unjustified rejection of 500 bags of yellow onions

Principal points involved: Broker was agent of buyer; evidence failed to establish meeting of minds resulting in a contract.

B-1
F-22

Order: Complaint dismissed.

Outline of Facts

Following a telephone conversation between complainant and the broker on Friday, March 27, 1941, complainant wired the broker: REFONE GOOD LOAD EIGHTY PERCENT DELIVERED 1.45 ON THIS PRICE I JUST BREAK EVEN TRY GET ME 5.00 OVER ON LOAD IF POSSIBLE MUST HAVE TIME TO PUT UP GOOD PACKAGE DELIVERY SOON AS POSSIBLE ADVISE ME WHERE TO DELIVER****. On the same date, the broker wired: ***WANT CONFIRM TELEPHONE CONVERSATION SHIP JACK GOLDBERG NEWARK N.J. CAR ONIONS BASIS 1.45 DELIVERED BILL CHAPEL STREET YARDS CENTRAL RAILROAD JERSEY DELIVERY ALSO SATISFACTORY IF POSSIBLE GET SHORT TRUCKLOAD SAME BASIS FOR SAME PARTY TO BE DELIVERED CHAPEL STREET FARMERS MARKET CONFIRM. Later the same day complainant wired that he was "shipping small load tonight," and the broker wired respondent: "AS PER YOUR TELEPHONE INSTRUCTIONS I HAVE PURCHASED FOR YOUR ACCOUNT SMALL LOAD DUE EARLY MORNING AM TRYING HARD TO LOAD CAR TOMORROW IF CANT LOAD CAR WILL HAVE 500 TRUCK SUNDAY NIGHT 1.45 DELIVERED PLUS BROKERAGE. On March 28, complainant wired the broker: CONFIRM LOAD DELIVERY NEWARK NEW JERSEY 1.45 NET TO ME MONDAY OR TUESDAY ONE LOAD SHIPPED YESTERDAY HAVE NO MORE ONION THIS PRICE GET IN TOUCH WITH ME BEFORE SELL MORE,*** and the broker wired respondent that complainant had confirmed the order for delivery "Monday or Tuesday." Respondent notified the broker that delivery on Tuesday would be "entirely too late". The broker did not communicate this information to the complainant and shipment of the 500 bags of onions in question was made from Canastota, New York, on Sunday evening, March 30. On Monday, March 31, respondent wired complainant that the onions had not arrived "therefore cancel." The respondent refused to accept the onions when delivery was tendered about 7 a.m., April 1, and resale was made in New York City for net proceeds of $491.17, or $233.83 less than the original contract price.

Complainant claimed respondent purchased 500 50-lb. bags of yellow onions, at $1.45 per bag delivered at Farmers Market, Newark, New Jersey, delivery to be made Monday, March 31, or Tuesday, April 1, and sought an award of damages.

Respondent claimed there was no valid contract; that the onions were not delivered within the time specified; and that respondent's refusal to accept was justified.

Rulings included in Decision

1. The broker was the agent of the respondent, the evidence indicating that respondent paid the brokerage. Whether he was also the agent for the complainant was not clearly shown. Apparently he had placed prior orders for the purchase of onions with complainant, but no other details concerning prior orders were shown. The fact that complainant in his first wire asked the broker to "try get" him $5 for the load in excess of $1.45 per 50 lb. bag "if possible," and in his wire of March 28 stated that the broker should "get in touch" with him "before sell more," though not conclusive, tended to establist a joint agency.

2. The existence of a contract and the breach thereof were not established. Since the record showed clearly that the broker was the respondent's agent, the wires quoted above were a sufficient note, memorandum, and writing to make the contract enforceable if there was a meeting of the minds of the seller and buyer as to when the onions were to be delivered at Newark, New Jersey, but there was nothing in the evidence to indicate clearly that the respondent or an agent for respondent agreed to delivery other than in time for the Monday morning market. There was nothing in the evidence to establish clearly the substance of the telephone conversation or conversations had between the broker and complainant concerning which the wires were intended as confirmations. Complainant's wire of March 28 was not binding on the respondent merely because it was not answered prior to the shipment of the onions. The complaint was dismissed.

S-2994, December 12, 1942, Docket 4171: (S. P.)

VINCENT L. LAZZARO, NEW YORK, N.Y. v. HARRY A BERBERIAN, MODESTO, CALIFORNIA

Violation charged: Failure to deliver grapes in accordance with contract.

Principal points involved: No meeting of minds as to weights of lugs of grapes and no valid contract; buyer's delay in rejecting shipments caused loss to shipper and warranted dismissal of complaint.

F-22
H-10
H-26

Order: Complaint dismissed.

Outline of Facts

In the course of negotiations for the purchase and sale of four cars of juice grapes for shipment from Modesto, California, to Buffalo, New York, on November 3, 1940, respondent wired the broker: CAN LOAD FOUR CARS HALF ALICANTE HALF CARRIGNANE FOR VALENZANO AND FOUR CARS OF SAME FOR LAZZARO . . . CARRIGNANE 33 POUNDS ARARAT BRAND. On November 4, the broker prepared a standard confirmation of sale signed by the complainant, specifying 37 pounds net. This confirmation was mailed to respondent who modified it to correspond with the telegram of November 3, and returned it to the broker who submitted it to the complainant on November 12. Shipment of four carloads was made on November 6, 8, 9 and 11, and on November 11 the complainant, on being informed by telephone that his bank held documents concerning the grapes, said that he would take them up on arrival of the cars. Later, on seeing the net weights, he advised the bank that he could not accept the grapes because delivery was not made in conformity with the contract. One of the cars arrived on November 15 at the Weehawken, New Jersey, Station, and another one on November 16. On November 20, the complainant wrote the respondent stating that he could not use the

grapes and asking for a return of the deposit. Complaint was filed with the Department for recovery of the $400 deposit.

Respondent denied liability, stating that the complainant "was playing the market and for time which caused me to lose $1590 and in view of this fact I see no reason why I should return him the $400 deposit."

Rulings included in Decision

1. Since the complainant agreed to accept part of the grapes weighing 37 pounds per lug and respondent agreed to furnish such grapes in lugs weighing 33 pounds, there was no meeting of the minds and no valid contract.

2. Complainant's unreasonable delay in rejecting the grapes (8 days after receipt of the confirmation and four and five days, respectively, after arrival of the cars, during which time no question was raised with respect to the contract terms) caused respondent to sustain a loss in excess of the $400 which was the amount of the deposit made by complainant. The complaint was therefore dismissed.

S-2995, December 12, 1942, Docket 4198: (S. P.)

CHARLES R. ALLEN, CHARLESTON, S. C. v D. S. SILVIA, CHARLESTON, S.C.

Violation charged: Unjustified rejection of 211 sacks of potatoes.

Principal point involved: Underweight of sacks of potatoes and failure of seller to recondition some of sacks as agreed made rejection not without reasonable cause.

H-13
H-38
P-13

Order: Complaint dismissed.

Outline of Facts

There was no dispute between complainant and respondent as to the purchase and sale, on March 18, 1942, for the total price of $414.70, of 211 sacks of potatoes then in complainant's warehouse at Charleston, S. C., to be taken by respondent from the warehouse, and that respondent did not accept and pay for them after entering into the contract. Some of the potatoes had been reconditioned before the contract was made and others were to be reconditioned by complainant, who claimed that he did recondition them. After respondent refused to take them, complainant sold the potatoes for $253.75, or for $165.95 less than the contract price, and asked for an award of damages.

Respondent claimed that the potatoes did not meet contract weights and that complainant had not reconditioned some of them as he agreed.

Rulings included in Decision

1. Although not clearly shown that the sale involved was in interstate commerce, it was assumed that it was since the evidence indicated that the potatoes had been shipped from other States to South Carolina and respondent did not deny the interstate nature of the transaction.

2. Complainant did not show that the sacks of potatoes tendered to respondent met the specifications of the contract. About 50 sacks had been reconditioned, and complainant agreed to recondition about 50 other sacks to a grade and quality equal to those already reconditioned. Except for those which were to be reconditioned, the potatoes were purchased "as is," but this referred to the condition and location, and not to the weight per sack, which was to be 100 pounds. The evidence indicated that some of the potatoes had not been reconditioned and that some of the sacks, although marked 100 pounds, were from 5 to 20 pounds underweight.

3. Respondent's refusal to accept the potatoes was not without reasonable cause, and the complaint was dismissed.

S-3015, January 15, 1943, Docket 4178: (S. P.)

SIMON SIEGEL CO., CHICAGO, ILL. v. MARTIN UNGERLEIDER CO., KANSAS CITY, MISSOURI

Violation charged: Failure to pay a deficit incurred in handling for respondent's account a carload of tomatoes.

Principal points involved: Burden on complainant to prove material allegations; lack of proof of necessity for dumping precludes recovery of damages; assignment of interest subject to proof.

N-4
N-11
N-14

Order: Complaint dismissed.

C-3

Outline of Facts

Simon Siegel, doing business as Simon Siegel Company, alleged that he "succeeded to all the rights, titles and claims of Simon Siegel Inc., a corporation, against the respondent"; that complainant agreed to purchase but thereafter rightfully refused to accept an interstate shipment of tomatoes; that respondent released complainant from liability on account of his rejection and expressly authorized him to handle the shipment at Chicago, Illinois; that complainant was unable to sell the tomatoes at any price and they were dumped; that the cost of dumping and freight charges expended by complainant on behalf of respondent amounted to $425.42, and were still due and owing to complainant.

Respondent's answer included a denial that respondent released complainant from payment of the purchase price of the tomatoes, but admitted wiring him instructions to handle the tomatoes for respondent's account. Respondent alleged that complainant knew it acted as a broker in selling the tomatoes and that complainant was negligent in the handling and dumping of the load.

Ruling included in Decision

There was insufficient evidence to support essential findings of fact in harmony with the allegations of the complaint. Complainant failed to sustain the burden of proof as to each of the material allegations of the complaint not admitted in the answer, one of which was that when the tomatoes arrived at Chicago complainant was unable to sell them at any price. Complainant wired respondent on November 10 that Government inspection showed that about 30% of the load consisted of grade U. S. No. 1 quality, and that an average of 10% of the tomatoes were affected by decay. According to Federal inspection certificate dated November 15, decay had increased on that date to an average of approximately 45%. Such wire and certificate of inspection were not regarded as convincing proof that complainant was unable to sell the tomatoes at any price, or of the necessity for dumping them. When perishable commodities are dumped it is usual to produce a certificate issued by the health department of the city, or other authority, showing the necessity for dumping, and where proof of damages rests on such necessity, lack of proof of the necessity for dumping precludes recovery. Moreover, the usual form of proof of payment of freight charges, unloading costs, cost of extra ice, and dumping costs, that is, receipted bills showing specific amounts, or other reliable evidence of the payment of specific amounts, was lacking. Then too the complaint and exhibits attached thereto indicated that the agreement upon which complainant relied was made by Simon Siegel, Inc., and respondent, but there was no proof of the assignment of the alleged cause of action to the complainant, or that he otherwise succeeded to the rights and causes of action of Simon Siegel, Inc. The complaint was therefore dismissed.

S-3016, January 19, 1943. Docket 4163: (S. P.)

SYRACUSE FRUIT CO., INC., SYRACUSE, N. Y. v. COONEY AND KORSHAK, CHICAGO, ILLINOIS.

A-7
H-16

Violation charged: Failure to deliver a carload of onions in compliance with contract.

Principal point involved: Prima facia case made by using only inspection service available, but buyer extinguished any right to recover damages by exercising dominion over shipment by causing car to be held over and not diverted.

Order: Complaint dismissed.

Outline of Facts

On November 17, 1941, through a broker, complainant contracted to purchase from respondent a carload of U. S. No. 1 sweet Spanish onions, 3 inches and up, in 50 pound sacks, at $1.52½ per sack delivered. The car arrived at Syracuse, New York, at 6:00 a.m., November 22 (Saturday), and complainant was notified of its arrival at 7:20 a.m. At 11:00 a.m. R.P.I.A. inspection was made, showing decay ranging from small spots to nearly complete decay, neck rot, ranging from 0 to 20, average 9%. The broker immediately notified respondent by wire and requested an allowance of 52½¢ per sack, stating the shipment would not be accepted unless allowance were made. At 12:52 p.m. respondent wired the broker, objecting to private or railroad inspection and stating "If Syracuse can't support claimed decay with Government inspection will divert elsewhere." The broker replied immediately, explaining there were no Federal inspectors in Syracuse and that complainant preferred "divert replace with sound fruit otherwise insist on allowance." To this respondent replied "We dont accept railroad inspections requested allowance absurd will make no replacement diverting elsewhere" and at 2:00 p.m. the broker wired respondent that complainant was "willing secure Government inspector from Rochester or Buffalo and requires car onions. Can compromise .30 reduction." Additional wires were exchanged between the broker and respondent, complainant insisting upon an allowance or replacement and respondent refusing, stating diversion would be made. Respondent notified the railroad to divert the shipment to New York City but the railroad failed to comply with instructions and held the car, at the broker's or the complainant's request, for Federal inspection, which was obtained at 4:15 p.m. November 24, showing that, as to condition, there was an average decay of 15%, ranging from 5 to 25%. Complainant asked for damages of $97.20 alleged to represent the difference between the agreed purchase price and the cost of a replacement carload which it purchased.

Respondent filed an answer, following which an opening statement of facts was filed by complainant and respondent filed an answering statement of facts.

Rulings included in Decision

1. The contract entered into between the parties did not provide that the commodity was to be inspected by any particular service and by using the only inspection service available complainant made a prima facie showing that the produce did not meet the grade requirement of the contract.

2. Based on the railroad inspection certificate complainant rejected the produce and ordinarily would be entitled to damages suffered by reason of the shipper's failure to deliver as contracted.

3. Complainant wilfully caused the shipment to be held over, in violation of respondent's specific instructions to the railroad company to divert the car, and by so doing exercised dominion over the produce, which up to that time it had rejected, by such arbitrary action extinguishing any right it may have had to recover damages from respondent for failure to deliver as contracted. The complaint was therefore dismissed.

S-3018, January 20, 1943, Docket 4150: (S.P.)

WESTERN FRUIT GROWERS, INC., LOS ANGELES, CALIF. v. FISHER BROTHERS COMPANY, CLEVELAND, OHIO.

Violation charged: Unjustified rejection of a carload of oranges.

Principal points involved: In a purchase "subject to buyer's approval on arrival" the buyer has a right to exercise his judgment as to whether the commodity fulfilled the contract, but cannot be arbitrary.

Order: Complaint dismissed.

Outline of Facts

On August 15, 1941, through a broker, respondent purchased from complainant a carload of oranges then in transit in interstate commerce, at the agreed price of $1301.04, the memorandum of sale specifying "subject to buyer's approval on arrival." Upon arrival at Cleveland, Ohio, respondent rejected shipment because the oranges were too irregular, were poor in color, and scarred and some were decayed, while, it was claimed, the broker had represented them to be "free from any defects whatsoever, good in color and regular in size." Resale was made at auction for $872.64, or at a loss of $428.40, for which amount complainant asked an award.

Certificate of Federal inspection made on August 19, 1941, after arrival, showed that the stock graded U. S. No. 1, but that the defects averaged 8%, consisting principally of scarring and 2% decay known as Blue Mold Rot.

Ruling included in Decision

1. Complainant failed to establish, by a preponderance of the evidence, that the oranges were of a quality which met the approval of respondent in accordance with the special agreement that they were to be "subject buyer's approval on arrival," and that the rejection was without reasonable cause and arbitrary, because they were "too irregular, poor in color, scarred, and some decayed." The Federal court in a trial de novo (Richman & Samuels, Inc., vs. L. Yukon & Sons Produce Co., S-1247) which involved a shipment of honeydew melons, with reference to this provision,

stated in an unreported opinion:

> "I think this is a case where the court would construe this provision to mean that the buyer had the right to exercise his judgment as to whether the commodity fulfilled the contract and that therefore this contract provision with reference to these honeydew melons resolved itself into a question of the right of the defendant to exercise his judgment as to whether he would or would not accept the shipment. Certainly it is a matter dependent on his judgment. Under all these facts and circumstances the judgment must be for the defendant."

It further states:

> "This contract does not give defendant the right to refuse the shipment arbitrarily. He cannot say: 'I do not approve them; therefore, I will not take them, whatever the quality.'"

The complaint was dismissed.

S-3021, January 26, 1943, Docket 4085: (Hearing)

FRED LEUENBERGER, CLACKAMAS, OREGON v. UNITED FRUIT & PRODUCE CO., INC. AND/OR UNITED FRUIT DISTRIBUTORS, INC., PORTLAND, OREGON

Violation charged: Failure to make full payment for various lots of rhubarb.

Principal point involved: Burden of proof on complainant to establish by preponderence of evidence that produce was sold to respondent as alleged and not to be handled on consignment. N-4

Order: Complaint dismissed.

Outline of Facts

Informal complaints were filed by six Oregon growers, Fred Leuenberger, A. M. Notz, H. Hartnell and Chas. W. Casto, of Clackamas, Fred Bolle of Oregon City, and Ralph Deakins of Milwaukie. Later Fred Lauenberger received powers of attorney from the other five growers and this action was brought on his own and their behalf.

From April 10 to April 20, 1941, complainant and his principals loaded 7 cars with a total of 6601 boxes of rhubarb, which was shipped by respondents to dealers in various cities outside the State of Oregon. Accounts sales were rendered by respondents to the growers showing a deficit of $.4756 per box on one car and $.188 per box on another, with net returns ranging from $.11 per box on one car to $.325 per box on another. Complainant claimed that the rhubarb was

purchased by respondents and that the total amounts remitted were short by $2,387.17 of the sum due, calculated on the alleged agreed price of 40¢ per box f.o.b. respondent's warehouse, Portland, Oregon, and that an additional $76.50 was due on an additional car containing 500 boxes shipped on consignment and 255 boxes purchased by respondents at 40¢ per box, all of which rhubarb was accounted for by respondents on a consignment basis. Respondents denied that they purchased any of the rhubarb, stating that they received it to sell as commission agents for the owners and accounted in full on that basis. Both sides offered the testimony of witnesses in substantiation of their allegations.

Ruling included in Decision

The evidence failed to support the allegations of the complaint. The burden of proof was upon the complainant to establish by a preponderance of the evidence that the produce was sold to respondents at a price of 40¢ per box. The testimony of record offered by complainant was conflicting and part thereof, at least, was at variance with the allegations of the complaint that the price agreed upon was 40¢ per box, f.o.b. Portland. This conflict of testimony might not be fatal to the claims of damages made by some of the growers. However, the record showed that the growers, after not receiving payment although a reasonable time had elapsed within which payment should have been expected on an outright sale, continued to make deliveries to the respondents, and this action would seem to negative the contention that the transactions were outright sales. This contention was further negatived by the action of the growers in failing to register any objection to receiving accounts sales from the respondents, which would ordinarily indicate that a principal and agent relation existed. The only documentary evidence consisted of the delivery receipts which, considered individually or collectively, did not support the allegations that a price of 40¢ per box was agreed upon by the parties but, to the contrary, indicated that the shipments were handled on a consignment basis. (Testimony offered indicated that, on consigned produce, receipts were issued to the growers for each delivery showing the number of boxes and the initials of the person receiving the produce, while, when respondents purchased produce, the price per box was always shown on the ticket).

An investigator for the Government checked some of the returns submitted by Eastern concerns to the respondents and found that they corresponded with the accountings rendered to the growers. The complaint was dismissed.

S-3023, January 28, 1943, Docket 3774: (Hearing)

THE LOGIN CORPORATION, SAN FRANCISCO, CALIFORNIA v. MANNIELLO BROS. & MAYRSOHN, INC., NEW YORK, NEW YORK.

Violation charged: Unjustified rejection of a carload of grapes.

Principal points involved: Improper loading of grapes prevented sufficient circulation of cold air from bunkers; removal of part of load for purpose of storing if found to conform to seller's warranty did not constitute acceptance.

D-15
R-11
A-8

Order: Complaint dismissed; respondent's counterclaim dismissed.

Outline of Facts

On or about July 20, 1940, through a broker, respondent purchased from complainant, at a price f.o.b. Exeter, California, a carload of grapes described in the broker's memorandum of sale, signed by respondent's representative, as "sawdust chests Red Malagas 34 lbs. net strapped,***, good-size berries good color U. S. one." Shipment was made from Exeter, California on August 1, the bill of lading issued at shipping point bearing the endorsement, "Pre-iced car furnished by carrier. Standard refrigeration." The car arrived at Jersey City, New Jersey, August 10, and, at respondent's request, was placed on the private siding of the Union Terminal Cold Storage Company during the early morning of August 12, respondent removing 5 crates to its store. Respondent refused to accept the shipment and complainant asked for damages of $1,171.78.

Respondent claimed that the grapes failed to conform to complainant's warranty in that they "were not grown, picked, prepared, packed, loaded, refrigerated or otherwise in suitable shipping condition for export to South America from New York after being transported from California," and did not grade U. S. No. 1 table grapes, and filed a counter claim for damages. The evidence did not show that complainant, prior to entering into the contract, was informed that respondent intended the grapes for export.

A Federal-California inspector, who completed his inspection on August 1, certified that the hatch covers were closed, plugs in, and bunkers full of ice, and that the grapes were "Mature, fairly well colored. Berries fresh, firm and firmly attached. Stems well developed and strong. In most lugs from one to three decayed berries, in some lugs none. Defects average within tolerance for grade. Grade: U. S. No. 1." A Federal inspector who made inspection on August 12 stated that approximately one-third of the load had been removed (chests on platform), and he referred to his inspection certificate and his finding that the temperature in the top layer

of chests next the bunkers was 50° F.; those next to the center of the load, fourth layer, 103° ; in the center of the load, third layer, 90°; and in the center of the car, seventh layer, 82°F. He found that decay consisted of Blue Mold Rot ranging from less than 1% to 10%, averaging approximately 5%, occurring mostly in chests showing high temperatures. His attention was called to a description of the loading made by another witness who said that "even layers" were placed "4 inches from one side wall, and odd layers 4 inches from the other side wall of the car ***" and answered: "Yes, ***alternate layers against the sides of the car." He referred to the loading of the chests as "staggered," and stated that in his opinion such method of loading prevented "action of the ice on the boxes in the center of the load where they were insulated from the outer air of the car." His certificate certified that in chests showing high temperatures, the sawdust was damp, "In chests showing higher temperatures berries are fairly firm to flabby, mostly of dullcolor, with sharp turpentine flavor."

A Binney Inspection Service inspector, on August 12, found temperatures ranging from 48° to 54° F. in the bottom of the load, and from 96° to 120° in the middle of the load. He stated that since the condition of the grapes was "comparatively good" in the parts of the load that received a "circulation of cold air" he assumed that "further circulation through the load" would have preserved the grapes in good condition throughout the load.

One of the witnesses described the manner in which the grapes were placed in the car as a "divided load, center brace, chests 6 and 7 high, 6 wide, with the top layer stripped."

Rulings included in Decision

1. Respondent's refusal to accept the grapes was not a rejection without reasonable cause, since: (a) The grapes were not so loaded as to permit sufficient circulation of cold air from the bunkers to reduce the temperature of the car and prevent abnormal deterioration in transit. The evidence indicated that the car was intended as a lengthwise divided load, and Rule 11 of the railroad carrier's tariff provides that "first stacks of containers must be loaded in tight contact with car bunker walls, leaving equal spaces between containers and between containers and side walls of car. Remaining stacks of containers must be loaded across the car directly in front of containers in first stacks, with all containers in tight contact and in line with containers in first stacks, leaving space in the doorway of the car for a center gate." Complainant failed to provide space between the containers, and between the containers and the side walls of the car. The car was "pre-iced" on July 31 and was re-iced at least ten times during transit. A total of 4,400 pounds of ice was put in on August 9. On August 12 the ice was about 2½ feet from the top of the bunkers.

The extreme differences in temperature of the grapes at different places in the load was regarded as convincing proof of the lack of proper circulation of air. (b) Respondent inspected the grapes within a reasonable time after the delivering carrier had placed the car so that they could be unloaded, in part, and inspected, and promptly notified complainant's agent, who in turn promptly notified complainant of respondent's refusal to accept. Respondent's removal of a part of the grapes from the car was for the purpose of placing them in storage, if inspection showed that they conformed to the complainant's warranty, and did not constitute an acceptance thereof within the intent and purpose of sections 47 and 48 of the Uniform Sales Act. Moreover, it was alleged in the complaint that the respondent "refused to accept" the grapes rather than that there was a technical acceptance of the shipment. The complaint was dismissed.

2. Although this was an f.o.b. transaction, the buyer did not assume the "risks of damage", that were caused by the shipper. However, respondent failed to offer sufficient proof to establish what damages, if any, were sustained. Its witness stated that the market price of red Malaga grapes packed in sawdust chests, 34 lbs. net, f.o.b. California, on August 12, ranged from $1.50 to $1.75 per chest, which corresponded with the sale price of the grapes in question, f.o.b. California. He stated that the New York market value would be the California price plus transportation charges from California to New York, which was about 85 to 90¢ per chest. This did not amount to proof of damages suffered by respondent of 25¢ per chest, or any other amount. The counterclaim was dismissed.

S-3027, March 9, 1943, Docket 4172: (S. P.)

Application of Sam Magliolo and Sam Barone of Memphis, Tennessee, for a license under the Perishable Agricultural Commodities Act to do business under the name Sam Magliolo and Barone.

K-9 Principal point involved: Partnership unfit to engage in produce business because of practices of Sam Barone which were prohibited by and in violation of section 2 of Act.

Order: Application for license denied.

Outline of Facts

On May 18, 1942, the partnership of Sam Magliolo and Barone of Memphis, Tennessee, composed of Sam Magliolo and Sam Barone, applied for a license under the act. On June 2, 1942, an order was issued directing the applicants to show cause why their application should not be denied by reason of previous violations of the act by Sam Barone in the following interstate transactions:

On or about December 29, 1941, San Barone purchased at Edinburgh, Texas, from the Lone Star Fruit Company, $365.80 worth of citrus fruit for which he failed to pay, and obtained from the seller $60 in cash which he failed to return.

On or about April 25, 1942, by oral agreement with Quimby Brokerage Company, he agreed to purchase 60 bushels of cabbage greens at 75¢ per bushel f.o.b. Laurel, Mississippi, and thereafter failed, neglected and refused to accept and take delivery, and the seller suffered a loss of $9.00, the amount of the difference between the agreed purchase price and the proceeds of resale.

During April 1942, he orally represented to one R. H. Boetler, in connection with proposed purchases of vegetables, that he was then and there acting as agent for Manzo Brothers and Company, Inc., of Chicago, Illinois, but in truth and in fact he was not at that time such agent, and the statement was false and misleading.

By letter dated June 5, 1942, which may be regarded in the nature of an answer, Sam Barone admitted some of the statements of fact. He drew the conclusion that he had not violated the act and stated that he was willing to pay for some of the produce. No request was made for an oral hearing. Depositions supporting the facts alleged in the complaint were taken on behalf of the Government. No evidence was submitted on behalf of the applicants.

Ruling included in Decision

By reason of Sam Barone's having engaged in practices which were prohibited and were in violation of section 2 of the Perishable Agricultural Commodities Act, Sam Barone and the applicant partnership, although the partnership as such was not a party to the violations, by reason of his being a member and partner thereof, are unfit to engage in the business of a commission merchant, and/or dealer, and/or broker, and the application for license was denied.

S-3033, April 3, 1943, Docket 4214: (S. P.)

WESCO FOODS COMPANY, CHICAGO, ILLINOIS v. THOMAS CAITO SONS, INC., CLEVELAND, OHIO

Violation charged: Unjustified rejection of two carloads of grapes.
Principal point involved: Evidence insufficient to meet complainant's burden of proof.
Order: Complaint dismissed.

Outline of Facts

On January 26, 1942 complainant purchased and shipped from Chicago, Illinois to respondent at Cleveland, Ohio two carloads of California Emperor grapes. An agreement was made by C. C. Roach, the Cleveland manager of complainant corporation, with Leonard Caito, president of respondent corporation. Caito asked Roach concerning available U. S. Fancy grapes for shipment from Chicago and Roach said that Caito was advised that two cars of "Diamond K" brand of California Emperor grapes could be delivered to respondent at Cleveland at $2.15 per lug, but that they would have to be inspected at Chicago. He said that Caito was later advised as to the condition and quality of the grapes. Roach executed a written confirmation of sale wherein the price was stated as $2.10 per lug delivered at Cleveland and which bore the condition statement as follows: "Good color, only occasional pale, medium to large size, firm, generally not over 1% decay, 3% weak cap stems, cellophane face." He stated that he was unable to secure the buyer's signature on the confirmation.

Leonard Caito testified that previous to January 24, 1942 he had purchased a carload of U. S. Fancy grapes from complainant and on that date told Mr. Roach that he wanted two more cars of Fancy grapes, and that he offered $2.10 per lug delivered at Cleveland, Chicago acceptance, if they were U. S. Fancy grade. He denied that he bought the grapes according to brand or that he authorized complainant to buy them as respondent's agent. He denied that he agreed to pay complainant $25 per car commission, and stated that he never received the Chicago inspection certificates. Based on Federal inspection made at Cleveland on January 27, 1942, the inspector certified that the grapes then failed to grade U. S. No. 1 Table. Caito stated that the grapes were refused because they were not what he had agreed to purchase.

Copies of the report of investigation were served on the parties. The parties waived an oral hearing and submitted evidence in the form of verified statements of fact and depositions.

Ruling included in Decision

The evidence was insufficient to meet the burden of proof resting on complainant to establish respondent's breach of contract in violation of the act. The complaint was therefore dismissed.

S-3038, April 19, 1943; Docket 4182: (S. P.)

M. J. DUER & COMPANY, INC., EXMORE, VIRGINIA v. MAC GOLDSTEIN, CONNEAUT, OHIO

Violation charged: Unjustified rejection of carload of potatoes.

Principal point involved: Delayed delivery and failure of potatoes to meet specification "bright stock" justified rejection.

Order: Complaint dismissed.

Outline of Facts

On July 18, 1941, respondent, acting through its agent, wired complainant to ship on that date a minimum carload of grade U. S. No. 1 cobbler potatoes, at the price of $1.60 per hundred-pound bag, delivered at Conneaut, Ohio, specifying "bright stock." On that date complainant confirmed respondent's offer and shipped to respondent from Machapongo, Virginia, 300 sacks of potatoes. The car arrived at Conneaut July 24, 1941, at 2:20 a.m. The delivering railroad carrier notified respondent on July 24, 1941 at 4:30 p.m. of the placement of said car for unloading. On July 25, 1941 at 11:25 a.m., respondent wired complainant that he was refusing the shipment "account decay and delay." Complainant asked for damages occasioned by the allegedly unjustified rejection.

Respondent admitted that he agreed to purchase the potatoes at a price per sack delivered at Conneaut, Ohio. He alleged that the shipment should have arrived for delivery to him not later than the early morning of July 22, 1941, but did not arrive at that time and he was compelled to buy other potatoes to supply his trade, and that the potatoes later tendered by complainant were not "bright stock" as specified. He denied that his refusal to accept the delayed shipment constituted a violation of the act.

The Federal-Virginia loading point inspection certificate described the potatoes as "firm, fairly clean. Grade defects within tolerance." The destination inspection certificate was restricted to condition factors and makes no reference to those factors except to give the percentage of the potatoes that were soft and affected by rot.

Rulings included in Decision

1. The potatoes tendered to complainant were not "bright stock," as warranted.

2. There was delay in delivering the potatoes. Even though no specific delivery date was specified, complainant directed that shipment be made on July 18 and the contracting parties understood that

delivery probably would be made July 21, and not later than July 22. The usual running time for a carload shipment from Machipongo, Va., to Erie, Pennsylvania, a point on the Pennsylvania Railroad approximately 30 miles from Conneaut, Ohio, is three days. What additional time would normally be required to transfer a car at Erie, Pa., from the Pennsylvania Railroad to the New York, Chicago and St. Louis Railroad, also known as the Nickel Plate, was not shown, but one day was suggested as the reasonable additional time. The car should have arrived at destination not later than July 22.

3. Respondent's refusal to accept the shipment was not a rejection without reasonable cause, since the potatoes were not "bright stock" as warranted and there was delay in making delivery. As bearing on the delayed delivery, the decision cited A. A. Corte & Sons v. Midwest Produce Company, S-2010, and Western Fruit Growers, Inc. v. Minneci Fruit Co., S-2082, where it was decided that one day's delay in delivery, when the contract did not specify a particular delivery date, did not justify rejection, and W. Calvert Cullen, Jr. v. M. Dunn & Co., S-2281, where it was held that the buyer's refusal to accept potatoes that were tendered two days after expiration of normal running time, no delivery date being specified, in connection with a showing of decay in some sacks of the potatoes in excess of tolerance permitted for grade U. S. No. 1, was not a rejection without reasonable cause. The complaint was dismissed.

S-3040, May 5, 1943, Docket 4217: (S. P.)

ALFRED A. SAISSELIN, OSWEGO, NEW YORK v. JOSEPH DENHOLTZ & SONS, INC., NEWARK, NEW JERSEY.

Violation charged: Failure to pay in full for 3 shipments of lettuce; in counter-complaint Denholtz charged failure to deliver in accordance with the contract.

Principal point involved: Payment having been accepted and opposing claims having been settled, claims were dismissed.

Order: Complaint and countercomplaint dismissed.

Outline of Facts

On July 16, 1941, complainant sold to respondent two truckloads of lettuce at $1 per crate for 2 dozen size and $1.50 for the 3 dozen size, and the next day a carload of lettuce, to be the same quality as the truckloads, at $1.20 per crate, all prices f.o.b. Oswego, New York, for shipment to Newark, New Jersey. On July 18, 1941, respondent issued two checks in payment for the truckloads, which were accepted. On August 26, 1941, it issued and delivered to

complainant a check for $500, bearing the notation that it was in settlement for the carload. Complainant had previously agreed to an allowance of $89.10 and wired respondent: "... The allowance I made you was full settlement of our account with you . . ."

Respondent answered denying liability and filed a countercomplaint charging that it suffered damages from the failure of complainant to furnish lettuce which conformed to warranty.

Complainant replied to the countercomplaint denying liability.

Ruling included in Decision

Complainant having accepted the proceeds of the 2 checks delivered by respondent for the truckloads without protest, and the opposing claims of the parties as to the carload having been fully settled, the complaint and countercomplaint were dismissed.

S-3041, May 7, 1943, Docket 4242

In re: Carl Speck and J. H. Speck, doing business as Carl Speck Brokerage Company.

L-4

Principal point involved: Motion to dismiss filed by complainant because license terminated.
Order: Order of dismissal

Outline of Facts

Disciplinary complaint was instituted November 25, 1942. Respondents were charged with having failed truly and correctly to account promptly to their principal for the proceeds collected about June 25, 1941, from the sale in interstate commerce of a shipment of oranges. Copies of the complaint were served on respondents on January 5, 1943. The complaint was signed by W. G. Meal, Chief, Fruit and Vegetable Branch, who has filed a motion for dismissal of the complaint alleging that respondents' license has terminated and that complainant considers it inadvisable to prosecute the complaint further. Service of such motion was made on respondents by registered mail on April 2, 1943.

Ruling included in Decision

The complaint was dismissed.